IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) C.W.P. No. 10092 of 2003

Sudhir Kumar Yadav and others.

..... Petitioners through Shri Mukul Aggarwal, Advocate.

Versus

The State of Haryana and others.

..... Respondents through Shri B.S.Rana, Additional Advocate General, Haryana.

(2) C.W.P. No. 15849 of 2003

M/S Hanuman Bhatta Co. and others.

..... Petitioners through Shri P.K.Mutneja, Advocate.

Versus

State of Haryana and others.

..... Respondents through Shri B.S.Rana, Additional Advocate General, Haryana.

Date of Decision: 11.12.2007

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

This judgment will dispose of the above mentioned two writ petitions as they involve common questions of law and facts.

The petitioners are aggrieved by the notifications dated 11.10.2002 and 10.6.2003 issued by the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, whereby the minimum wages as payable to the workers under the Minimum Wages Act,1948 (for short, `the Act') have been revised/ enhanced and made applicable with effect from 11.10.2002.

By virtue of notification dated 11.10.2002, the State government proposed to enhance the minimum wages as per the schedule attached with it and invited objections from the persons likely to be affected within a period of two months from the date of its issue.

After considering the objections so received, notification dated 10.6.2003 was issued and the rates of minimum wages to be paid to the workers were enhanced and made applicable with effect from the aforementioned date.

Both these notifications have been attached as Annexures P2 and P4 with C.W.P.No.10092 of 2003, whereas the same are annexed as Annexures P4 and P6 with C.W.P.No.15849 of 2003,

The essential challenge to the above mentioned notifications is primarily based on the following three grounds:-

(1) The notification dated 11.10.2002 proposing the revision of the rates of minimum wages did not reveal the base month

and the year which the State intended to taken into consideration while fixing the minimum wages of the workers and it was contrary to the procedure as envisaged under the Act.

(2) The revised rates have been made applicable with effect from 11.10.2002 vide notification dated 10.6.2003, which could not have been done as the retrospective application thereof is not contemplated by the provisions of the Act.

(3) The notification dated 10.6.2003 has been issued without considering the objections of the petitioners which was contrary to the scheme of the Act.

In their written statements, the State of Haryana and its functionaries have controverted the averments made in the writ petitions and took up several preliminary objections. It has been emphasized therein that pursuant to notification dated 11.10.2002, only one set of objections was received from the employers and even that has been tampered with when attached as Annexure P3 with C.W.P.No.10092 of 2003 as the same does not conform to the original. That apart, it has been pleaded that there was no infirmity in the fixing of the minimum wages and giving them effect from 11.10.2002 as the procedure laid down by the provisions of the Act has strictly been followed. The official respondents have also averred that the matter regarding revision of minimum wages has already been settled by a Division Bench of this Court which upheld similar notification and negated the challenge while deciding C.W.P.No.13434 of 1995 – Pasupati

Spinning and Weaving Mills Limited and others Versus State of Haryana and others, on 25.1.1996.

Learned counsel for the petitioners contended that notification dated 11.6.2003 refers to the minimum rates of wages as being all inclusive, but, at the same time, in clause (3) thereof, it has been provided that adjustment in the wages shall be made six monthly, i.e., 1st January and 1st July, every year, after taking into account the average rise or fall in the Haryana State Working Class Consumer Price Index, which is not permissible under Sections 3 and 4 of the Act. They argued that either the rates should be all inclusive as per the provisions of Section 4(1)(iii) or the the same should be in consonance with Section 4(1)(i) and (ii), which provide for basic rate of wages and special allowance or basic rate with or without the cost of living allowance, but once the State Government resorts to provide an all inclusive rate, then it cannot have the other components to form the basis of minimum wages. Besides, the revision has been given retrospective effect which is not permissible.

On the other hand, learned counsel appearing for the official respondents contended that the impugned notifications have been issued after following due procedure prescribed under the provisions of the Act and the writ petitions are liable to be dismissed.

We have heard the learned counsel for the parties and have perused the record.

Section 3, 4 and 5 of the Act are the pivotal provisions of law around which the present controversy revolves. The relevant extracts of

Section 3, Sections 4 and 5 are reproduced below:-

"**Fixing of minimum rates of wages.**

3. (1) The appropriate Government shall, in the manner hereinafter provided,-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in

force immediately before the expiry of the said period of five years shall continue in force.

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum raes of wages payable to employees in such employment as soon as may be after such finding.

(2) The appropriate Government may fix--

(a) a minimum rate of wages for time work (hereinafter referred to as “a minimum time rate”);

(b) a minimum rate of wages for piece work (hereinafter referred to as “a minimum piece rate”);

© a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as “a guaranteed time rate”); and

(d) a minimum rate (whether a time rate or a piece rate) to

apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

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Minimum rate of wages.

4. (1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of--

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct , to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) an all inclusive rate allowance for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority

at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

Procedure for fixing and revising minimum wages.

5. (1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either --

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, nor less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the

date of its issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also." (Emphasis supplied)

An analysis of the above extracted provisions, when summarized, brings out the following essence:-

(i) The appropriate government shall, in the manner prescribed under Sections 3 and 4, fix the minimum rate of wages payable to the employes employed in an employment.

(ii) The appropriate government is to review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise them appropriately, if necessary.

(iii) While fixing the minimum wages under Section 3, the government is to see that components shall include,-

(a) the basic rate of wages and special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct so as to accord as nearly as practicable with the variation in the cost of living index;

(b) a basic rate of wages with our without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at

concession rates, where so authorised;

© an all inclusive rate allowing for the basis rate, the cost of living allowance and the cash value of the concessions, if any.

(iv) The rates so fixed shall be notified by the government which are to be made applicable after expiry of three months from the date of its issue unless the notification provides otherwise.

When the grounds of challenge to the notifications in question are tested against the aforementioned provisions of the Act, the controversy is reduced to a shrunken form.

A perusal of notification dated 11.10.2002 shows that a proper notice was given to the affected persons to submit objections or suggestions before the Financial Commissioner and Principal Secretary to Government of Haryana, Labour Department. The relevant extract thereof is reproduced hereunder:-

" No.3/101/84-3Lab. - In exercise of the powers conferred by clause (b) of sub-section (1) of Section 5 of the Minimum Wages Act,1948 (Central Act 11 of 1948) and all other powers enabling him in this behalf, the Governor of Haryana hereby publishes its proposal of minimum rates of wages (all inclusive) in respect of employment in Brick-kilns in the State of Haryana as mentioned in the Schedule given below proposed to be revised with effect from 1st September,2001, which were

previously revised vide Haryana Government, Labour Department Notification no. 3(101) 84-3 Lab. Dated 18th July,1995.

Notice is hereby given that the proposal will be taken into consideration by the Government on or after the expiry of a period of two months from the date of publication of this notification in the Official Gazette together with any objection or suggestion which may be received by Financial Commissioner and Principal Secretary to Government, Haryana, Labour Department, Chandigarh from any person likely to be affected thereby before the expiry of the period, so specified. ”

As noticed above, the official respondents have averred that only two representations dated 6.12.2002 and 9.12.2002 were received from the workers” unions, namely, Haryana Pradesh Bhatta Mazdoor Union and Lal Jhanda Bhattha Mazdoor Union, Haryana, while no representation was received from the petitioners or any other employer within the stipulated period, which expired on 11.12.2002.

The only representation dated 2.1.2003 is said to have been received from the side of the affected employers which was after the date contemplated under notification dated 11.10.2002.

The Advisory Board constituted under Section 7 read with Section 9 of the Act went into the representations of the workers' unions and that of the employers and after deliberations and inputs, took a decision to

revise the rates of wages and consequently, notification dated 11.6.2003 was issued giving effect to the increase/ revision w.e.f. 11.10.2002 which is the date of issue of notification dated 11.10.2002.

The petitioners have not been able to effectively rebut this aspect of the matter as brought out by the official respondents in their written statements. Therefore, there is no hesitation to conclude that the official respondents had followed the requisite procedure prescribed under the Act before issuance of the impugned notifications.

The next question that is to be determined is as to whether the factors which have been detailed in Section 4 of the Act are mutually exclusive or not. A perusal of Section 4 shows that sub-section (1) thereof contemplates a minimum rate of wage fixed or revised by the appropriate government in respect of a scheduled employments which may consist of the components which are ingrained in sub-clauses (i) to (iii). It nowhere states that these components cannot co-exist in oneness.

The Act is an essentially a beneficial piece of legislation which has been enacted to protect the interest of the workers.

Even though an employer and an employee have always had a symbiotic relationship, but at the same time, the relationship is as divergent as the banks of a river which are distant and destined not to meet always remaining non-convergent. Further, in a venture `of the kind' pursued by the petitioners, the labour force is often floating, drawn of migrants from other states and are mostly ignorant, illiterate and an unskilled workforce leaving them exposed to easy exploitation by those, who are motivated with a

blinding desire to maximize the profits.

It is in this context that the Act assumes significance and for this reason, it contemplates the periodical revision by taking into consideration various factors as detailed in Section 4.

A narrow interpretation of its intent by holding that they are mutually exclusive would only defeat the very intent and object of the Act. The components as indicated in Section 4 are merely guidelines and nothing prevents the State to incorporate these components in one single decision together so as to provide and maximize the benefit of revision which leans towards the employees/ workers.

We, therefore, do not find any merit in the contention raised by the learned counsel for the petitioners in this behalf and reject the same.

Lastly, the effect of the retrospective application of the revision has to be seen with reference to the provisions of the Act. Sub-section (2) of Section 5 of the Act, in no unambiguous terms, provides that the revision by way of notification shall come into force on the expiry of three months from the date of its issue unless such notification otherwise provides. These words necessarily have been incorporated as the same bring out the intent of the Legislation that the notifications issued under the Act which normally are to become effective on the expiry of three months from the date of issue, but the State is competent to provide for it otherwise and make it operational from any other date which may necessarily not be prospective.

The intent of the Legislation to give retrospective effect to a revision exists in the provisions as sub-altern. Section 3(1)(b) of the Act

provides that the appropriate government shall review at such intervals as it may think fit which intervals may not exceed five years, the minimum rate of wages so fixed and revise them if necessary.

Having taken into consideration the contingencies of review and revision of the minimum wages, which periods are not to exceed five years, the Legislation has, in its wisdom, provided in Section 5(2) of the Act that the notification can be given effect to by prescribing a date and in this eventuality, the notification shall take effect from the date so prescribed and not after the expiry of three months as has also been stipulated in that provision.

A Division Bench of this Court in Pasupati Spinning and Weaving Mills Limited's case (supra), dealt with the question similar to the one involved in these petitions. The relevant extracts of paragraphs 8 and 14 of that judgment are reproduced below:-

> "8. ..... Thus, the scheme of this Act, which is primarily a social legislation is to protect minimum standard of life for the workman and, therefore, must receive interpretation which would help achieving the object of this Act and cannot be construed or interpreted like the provisions of a penal act or the taxation laws, which in fact may defeat the real purpose and object of this Act. .....
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> 14.The fixation of minimum rate of wages is not a levy tax or a penalty which must be construed strictly and has to be

prospective in absence of a specific provision in the statute. The social welfare legislation must receive liberal construction and more so when the legislative intention is clearly indicated in the provisions. The period of three months for giving effect to the notification from the date of its publication is a protective measure i.e. in the event the appropriate Government fails to specify a date for this purpose. The minimum wages would come into force irrespective of anything else on the expiry of three months. This period can neither be construed nor could be the intention of the legislation to restrict the general expression used in sub-section (2) of Section 5, `unless such notification otherwise provides'. The preceding words vest a power in the appropriate Government to give effect to the notification from any time and that is why the word `otherwise has been used. The period of three months cannot be permitted to be interpreted so as to create an absolute embargo upon the exercise of the legislative power in regard to the declaration of the date, when the said notification shall be given effect to....."

In M/S. Mizar Govinda Annappa Pai and Sons and others Versus State of Karnataka and another, 1986 Lab. I.C. 1555 (Karnataka), a learned Single Judge of Karnataka High Court, while dealing with a question, "whether the State Government in exercise of its power under S.5 (2) of the Minimum Wages Act, has the power to issue a notification

revising the minimum wages with retrospective effect", held as under:-

> "A power is conferred on the State government under S.5(2) to make a notification revising the wages with retrospective effect. If it is held that the Government has got the power to issue the notification only with prospective effect, then the rights of the workman for the increased wages consequent on the revision could be denied by procrastination in the issue of the notification and in the deliberations of the Committee constituted for revision of wages. That could not have been the intention of the Parliament while constituting the committee for revision of wages and that is the reason why under S.5(20 the words "unless such notification otherwise provides" immediately preceded the words it shall come into force on the expiry of 3 months from the date of its issue. The power to give retrospective effect to the notification u/s. 5(2) could be recognised by implication also, if the scheme of the Act is kept in view. The connotation of `Minimum Wages' is not contractual but statutory. The employer would be bound under S.3 of the Act, by the minimum wages fixed or revised. Revision of wages is one mode of fixing the minimum rate of wages at the rate higher than what was fixed earlier under the Act. If this scheme of the Act is understood then it will not be difficult to come to the conclusion that the words `otherwise provides' in S.5(2) are both prospective and retrospective."

For the reasons recorded above, we do not find merit in the writ petitions and the same are dismissed accordingly.

(Vijender Jain)
Chief Justice

December 11,2007
"SCM"

(Mahesh Grover)
Judge